



Steven L. Beshear
Governor

PERSONNEL CABINET
501 High Street, 3rd Floor
Frankfort, Kentucky 40601
Phone (502) 564-7430
Fax (502) 564-7603
www.personnel.ky.gov

Nikki R. Jackson
Secretary

MEMORANDUM

PERSONNEL MEMO 08-04

TO: Cabinet Secretaries
Agency Heads
Personnel Administrators

FROM: Nikki R. Jackson, Secretary

A handwritten signature in blue ink, appearing to be "Nikki R. Jackson".

DATE: February 22, 2008

RE: Extension of FMLA Protection to Absences Due to Military Service

All agencies are advised of amendments to the federal Family and Medical Leave Act, 29 U.S.C. 2601, *et. seq.*, which became effective on January 28, 2008. The amendment provides for FMLA leave due to a "qualifying exigency arising out of a covered family member's active duty (or call to active duty) status." The United States Department of Labor has issued a Notice of Proposed Rulemaking and Request for Comments in 29 CFR Part 825 with respect to the definitions of terms applicable to the extension of FMLA coverage when a covered employee's family member is called to active military duty or where the covered employee is required under the National Defense Authorization Act for FY 2008 to care for wounded service members. We will note that the Department of Labor has proposed a number of rule changes with respect to the FMLA, but this advisory will concentrate on those relating to the expansion of the Act's coverage to military service-related absences.

Among other things, section 585 of the National Defense Authorization Act amends the Family and Medical Leave Act of 1993 (FMLA) to permit a "spouse, son, daughter, parent, or next of kin" to take up to 26 workweeks of leave to care for a "member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness." Two Important new leave rights were established:

- **New Qualifying Reason for Leave.** Eligible employees are entitled to up to 12 weeks of leave because of "any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active Duty, or has been notified of an impending call to active duty status, in support of a contingency operation.

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- **New Leave Entitlement.** An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of leave in a single 12-month period to care for the service member. This military caregiver leave is available during “a single 12-month period” during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave.

The full text of the statute, as amended is available on the USDOL’s web site at: <http://www.dol.gov/esa/whd/fmla/fmlaAmended.htm>. We emphasize that the Secretary of Labor has yet to define a “qualifying exigency arising out of a covered family member’s active duty (or call to active duty) status” and that as a result, that aspect of the amendment is not yet technically in effect. However, this Administration believes that the public policy embodied in Congress’ extension of the benefits of the FMLA is of such immediate concern to our veterans and their families that it should be implemented forthwith. Therefore, at the direction of the Governor and as of the date of this memorandum, *all* of the protections provided for in the Act will be extended to state employees within the governance of KRS Chapter 18A. Questions relating to interpretation of this memorandum may be directed to Daniel F. Egbers, Executive Director of the Office of Legal Services for the Personnel Cabinet at Dan.Egbers@ky.gov or 502-564-7430.